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Supreme Court of the United States

OCTOBER TERM, 1966

No. 108

SAMUEL MONASTERSKY,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A REHEARING FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner Samuel Monastersky prays for a re-hearing of a previously denied petition for writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on February 23, 1966. A petition for certiorari was previously denied by this Court on October 10, 1966.

Previous Applications

All previous applications including opinions and statutes were filed in the original petition for certiorari.

Stay of the Mandate

Petitioner Samuel Monastersky prays that the mandate of this Court be stayed pending the filing of the petition for a rehearing pursuant to Rules 51 and 58 of the Supreme

Court of the United States and Rule 28 (c), (2) of the Rules of the United States Circuit Court of Appeals for the Second Circuit.

Reasons for Granting a Rehearing

The petitioner Samuel Monastersky is effectively denied due process of law because of the many times he was compelled to be a defendant in the same criminal case prosecuted by the United States Government. This point has not been raised in the lower court. However, this court can invoke the Plain Error Rule, Rule 52 of the Federal Rules of Criminal Procedure and grant the petitioner relief.

Facts Concerning This Petition for a Rehearing

This petitioner was a defendant in a multiple conspiracy trial in June of 1961 that ended in a mistrial after six months before Honorable Richard H. Levet, United States District Judge, Southern District of New York. Petitioner was then re-tried along with twelve (12) other alleged conspirators and was convicted in a three month trial. Subsequently thereto, this case was reversed by the United States Circuit Court of Appeals in an opinion that in substance stated that by including this defendant in the multiple conspiracy was improper joinder, and ordered a new trial for this defendant and co-defendants, William Bentvena, William Struzzieri and Salvatore Panico. *United States* v. *Bentvena*, 319 F. 2d 916 (2nd Circuit). The petitioner Samuel Monastersky (and co-defendants Bentvena

and Struzzieri) then went to trial again in 1965. Petitioner-appellant was therefore a defendant in three federal criminal actions, cumulative total of approximately thirty-eight (38) trial weeks plus two appeals to the United States Circuit Court of Appeals and one petition for certiorari. This extreme pressure in re-trials and re-hearings could only be to the detriment of the defendant and result in depriving him of due process of law. This Court has never had the opportunity to discuss how many trials a criminal defendant can be subjected to before the time arrives when there is an undue process of law and it is restrictive and impossible for a man to properly defend himself. It is for this point of law that petitioner claims the Supreme Court of the United States at this time should speak out and declare what constitutes a denial of due process of law.

CONCLUSION

For the foregoing reasons, this petition for a rehearing for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH I. STONE
Attorney for Petitioner Monasterski

Certificate

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I, JOSEPH I. STONE, a member of the Bar of the Supreme Court of the United States and attorney for Samuel Monastersky herein, do hereby certify this petition for re-hearing is submitted in good faith and not for the purposes of delay.

Dated: New York, New York
October 27, 1966.

/s/ JOSEPH I. STONE
Joseph I. Stone
Attorney for Petitioner
Samuel Monastersky